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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,040	05/08/2001	Stephen Paul Zimmerman	8072M	2167

27752 7590 12/24/2002

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/24/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant N .

09/851,040

Examiner

Drew E Becker

Applicant(s)

ZIMMERMAN ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 24-27 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6-7. 6) ☐ Other:

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement received October 3, 2001 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the three "sample" references do not include a date. In addition it is not clear which of the two "Consumer Bases Test" is which. Although, the examiner telephoned Theodore P. Cummings regarding this matter, it is respectfully requested that this response also be put in writing so as to make the record clear. Mr. Cummings indicated that the "Torengos" picture was probably the 1999 test and that "Eagle" picture was probably the 1997 test.

Specification

2. The disclosure is objected to because of the following informalities: pages 1 and 11 refer to applications but do not include a serial number, also the attorney docket numbers should be removed when referring to an application. Applicant is also reminded that the status of these non-provisional applications should also be included. Appropriate correction is required.

Election/Restrictions

3. Applicant's election of claims 1-23 and 28-29 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 14, 16-20, 22-23, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 14, 16, 22, and 29 are dependent upon themselves. For the purposes of examination, it will be assumed that they depend from claims 13, 15, 21, and 28 respectively.

7. Claim 23, line 4 recites "bulk density greater than about 10×10^{-5} to about 35×10^{-5} g/mm³". It is not clear whether the claimed range is between these two numbers, or "greater" than each of them.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4, 10, 12-15, and 23 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicants' Admitted Prior Art (page 8, lines 19-32 of the specification).

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Applicants' Admitted Prior Art [AAPA] teaches non-planar snack pieces in a nested arrangement with a volumetric bulk density of 26 to $59 \times 10^{-5} \text{ g/mm}^3$, a package volumetric bulk density of 13 to $20 \times 10^{-5} \text{ g/mm}^3$, and chips which are concave, have similar shape and size, and a fat content of 38% (page 8, lines 19-32). The snack pieces would have inherently overlapped when packaged and possessed some degree of surface randomness.

10. Claims 1, 3, 10, 12-13, 21-22, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Carey et al [Pat. No. 5,747,092].

Carey et al teach overlapping non-planar snack pieces comprising chips with random surface features (Figure 1), a bulk density of 5 - 9.5 lb/ft^3 or 8 to $15.2 \times 10^{-5} \text{ g/mm}^3$ (column 20, line 39), a fat content of 18.5% (column 24, line 63), consistent size and shape (column 18, lines 5-39), packaging (column 20, line 37), a minimum thickness of .03125" (column 18, line 14), a maximum thickness at least 2.75 times greater than the minimum thickness (column 5, line 59) which results in a maximum thickness of at least 2.2 mm. The snack pieces would have inherently overlapped when packaged.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 1-4, 8-15, 21-23, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torengos [Procter & Gamble Consumer Bases Test on the Internet]. Torengos teaches a canister containing overlapping, nested tortilla chips, the chips being curved, and the chips being of consistent size and shape. The chips would have inherently possessed some degree of surface randomness. Torengos does not recite the density values, lipid content, maximum thickness, or modulus of elasticity. It would have been obvious to one of ordinary skill in the art to vary density, lipid content, thickness, and modulus of elasticity of Torengos since this would have been done during the course of normal experimentation and optimization, since increased density would have reduced shipping and storage costs, since some consumers prefer snack foods with reduced fat content, since chips were commonly made at this thickness, and since a more resilient chip would be less likely to break during shipping and storage.

13. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA.

AAPA teaches the above mentioned components. AAPA does not recite a snack piece density of 1 to 17×10^{-4} g/mm³ or a modulus of elasticity of 0.1-6 g/mm². It would have been obvious to one of ordinary skill in the art to use a snack piece density of 1 to 17×10^{-4} g/mm³ in the product of AAPA since this would have been done during the course of normal experimentation and optimization, since AAPA already included a volumetric bulk density of 26 to 59×10^{-5} g/mm³ and a package volumetric bulk density of 13 to 20×10^{-5} g/mm³ (page 8, lines 19-32), and since a dense snack piece would reduce the shipping and storage cost per package. It would have been obvious to one of

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ordinary skill in the art to use a modulus of elasticity of $0.1-6 \text{ g/mm}^2$ in the product of AAPA since this would have been done during the course of normal experimentation and optimization and since a more resilient chip would be less likely to break during shipping and storage.

14. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carey et al.

Carey et al teach the above mentioned components. Carey et al do not recite a snack piece density of $1 \text{ to } 17 \times 10^{-4} \text{ g/mm}^3$ or a modulus of elasticity of $0.1-6 \text{ g/mm}^2$. It would have been obvious to one of ordinary skill in the art to use a snack piece density of $1 \text{ to } 17 \times 10^{-4} \text{ g/mm}^3$ in the product of Carey et al since this would have been done during the course of normal experimentation and optimization, since Carey et al already included a bulk density of $5-9.5 \text{ lb/ft}^3$ or $8 \text{ to } 15.2 \times 10^{-5} \text{ g/mm}^3$ (column 20, line 39), and since a dense snack piece would reduce the shipping and storage cost per package. It would have been obvious to one of ordinary skill in the art to use a modulus of elasticity of $0.1-6 \text{ g/mm}^2$ in the product of Carey et al since this would have been done during the course of normal experimentation and optimization and since a more resilient chip would be less likely to break during shipping and storage.

15. Claims 5-7 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA as applied above, in view of Fink et al [Pat. No. 6,129,939].

AAPA teaches the above mentioned components. AAPA does not recite a bowl shape, sphere-cap, or a radius of curvature of $5-500 \text{ mm}$. Fink et al teach a snack piece comprising a bowl shape with a sphere cap (column 2, line 24). It would have been

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obvious to one of ordinary skill in the art to incorporate the bowl shape with a sphere-cap of Fink et al into the product of AAPA since both are directed to snack pieces, since AAPA already included curved chips (page 8, lines 19-32), and since chips having bowl shapes and sphere caps were commonly known as shown by Fink et al. Although not specifically recited, it would have been obvious to one of ordinary skill in the art to use a radius of curvature of 5-500 mm for the product of AAPA since this size of curvature was commonly used for chips, since this would have been done during the course of normal experimentation and optimization, and since AAPA already included a curved surface (page 8, lines 19-32).

16. Claims 9, 21-22, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA as applied above, in view of Carey et al.

AAPA teaches the above mentioned components. AAPA does not recite a maximum thickness of 2.5-5.5 mm and a lipid content of less than 23%. Carey et al teach a snack piece comprising a maximum thickness of at least 2.2 mm (as explained above) and a fat content of 18.5% (column 24, line 63). It would have been obvious to one of ordinary skill in the art to incorporate the thickness and fat content of Carey et al into the product of AAPA since both are directed to snack pieces, since the thickness and fat content would have been varied during the course of normal experimentation and optimization, since some consumers preferred products low levels of fat, and since a thicker snack piece would be less likely to break during shipping and transport.

17. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carey et al as applied above, in view of Bezek et al [Pat. No. 6,472,007].

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Carey et al teach the above mentioned components. Carey et al do not recite a nested arrangement. Bezek et al teach a food product comprising nested snack pieces (column 7, lines 12-22). It would have been obvious to one of ordinary skill in the art to incorporate the nested arrangement of Bezek et al into the invention of Carey et al since both are directed to snack pieces, since Carey et al already included a package (column 20, line 37), and since snack pieces were commonly packaged in a nested arrangement as shown by Bezek et al (column 7, lines 12-22).

18. Claims 4-7 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carey et al as applied above, in view of Fink et al.

Carey et al teach the above mentioned components. Carey et al do not recite a concave, bowl shape with a sphere-cap and a radius of curvature of 5-500 mm. Fink et al teach a snack piece comprising a bowl shape with a sphere cap (column 2, line 24). It would have been obvious to one of ordinary skill in the art to incorporate the bowl shape with a sphere-cap of Fink et al into the product of Carey et al since both are directed to snack pieces, since Carey et al already included a non-planar surface, and since chips having bowl shapes and sphere caps were commonly known as shown by Fink et al.

Although not specifically recited, it would have been obvious to one of ordinary skill in the art to use a radius of curvature of 5-500 mm for the product of Carey et al since this size of curvature was commonly used for chips, since this would have been done during the course of normal experimentation and optimization, and since Carey et al already included a non-planar surface.

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19. Claims 14, 23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carey et al as applied above, in view of AAPA.

Carey et al teach the above mentioned components. Carey et al do not recite a packaged bulk density of 10 to 35×10^{-5} g/mm³. AAPA teach a packaged bulk density of 13 to 20×10^{-5} g/mm³ (page 8, lines 19-32). It would have been obvious to one of ordinary skill in the art to incorporate the packaged bulk density of AAPA into the product of Carey et al since both are directed to snack pieces, since Carey et al already included a bulk density of 5 - 9.5 lb/ft³ or 8 to 15.2×10^{-5} g/mm³ (column 20, line 39), and since this range of packaged bulk density was commonly used for snack pieces as shown by AAPA.

20. Claims 5-7 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torengos as applied above, in view of Finks et al.

Torengos teach the above mentioned components. Torengos do not recite a concave, bowl shape with a sphere-cap and a radius of curvature of 5 - 500 mm. Fink et al teach a snack piece comprising a bowl shape with a sphere cap (column 2, line 24). It would have been obvious to one of ordinary skill in the art to incorporate the bowl shape with a sphere-cap of Fink et al into the product of Torengos since both are directed to snack pieces, since Torengos already included a curved surface, and since chips having bowl shapes and sphere caps were commonly known as shown by Fink et al. Although not specifically recited, it would have been obvious to one of ordinary skill in the art to use a radius of curvature of 5 - 500 mm for the product of Torengos since this size of curvature was commonly used for chips, since this would have been done during the course of

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normal experimentation and optimization, and since Torengos already included a curved surface.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 29910029U1 and JP 2000095205A teach packaged snack pieces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker
Examiner
Art Unit 1761

December 20, 2002